GURDIAL SINGH TARA SINGH

v.

HENDON HJ. MOHAMED & ANOR.

HIGH COURT MALAYA, PULAU PINANG
MOHAMED DZAIDDIN J
[ORIGINATING SUMMONS NO. 24-715-90]
25 MARCH 1992

LEGAL PROFESSION: *Complaint against member of the Malaysian Bar - Whether proper to join officers of the Bar Council and Bar Committee as parties in an appeal under s. 103(2) Legal Profession Act 1976 against the decision of the said bodies.*

A complaint had been preferred against a member of the Malaysian Bar. The complaint had been referred to the Malaysian Bar Council and the Penang Bar Committee. It was decided that no formal enquiry was necessary into the complaint. The complainant, dissatisfied with the said decision, appealed to the High Court pursuant to s. 103 of the Legal Profession Act 1976, naming both the honorary secretaries of the Bar Council Malaysia and the Penang Bar Committee as defendants in the originating summons application. The defendants sought to strike out the originating summons claiming that they were not the proper defendants in the action.

Held:

[1] Section 103(3) of the Legal Profession Act 1976 does not stipulate that the Bar Council must be made a party when an appeal is made to the High Court against the decision of the Bar Council (*Selvamary v. Rethinasamy*).

[2] The Bar Council is not a body corporate and cannot sue or be sued in its own name. Although it has power under s. 57(j) to institute, conduct, defend, compound or abandon any legal proceedings by and against the Malaysian Bar or its officers or otherwise concerning the affairs of the Malaysian Bar, it cannot institute or defend the proceedings in its own name.

[3] Whenever an appeal was made against the decision of a subordinate tribunal, the said tribunal was never cited as a party. The position of the Bar Council here was that of a subordinate tribunal. The names of the two defendants therefore must be struck out from the originating summons. By virtue of the wide powers given to the Court under O. 15 r. 6(2) of the Rules of the High Court 1980, the solicitor against whom the complaint was made was directed to be joined as the correct party and the originating summons to be amended accordingly.

[Application allowed with costs. Other orders as above.]

Case referred to:
Selvamary v. Rethinasamy [1991] 1 CLJ (Rep) 412 ***(foll)***

Legislation referred to:
Legal Profession Act 1976, ss. 41, 47, 57(j), 71, 95, 103, (2), (3)
Rules of the High Court 1980, O. 15 r. 6(2), 55

For the plaintiff - Gurdial Singh a/l Tara Singh (in person)
For the defendants - M. Kanesan; M/s. Shearn Delamore & Co.

JUDGMENT

Mohamed Dzaiddin J:

This is the defendant's application to strike out the originating summons on the ground that they are not the proper parties to the action.

By this originating summons filed on 24 June 1991, the plaintiff named Puan Hendon Haji Mohamed, the honorary secretary of Bar Council Malaysia and Puan Tan Gaik Choon, the honorary secretary of the Penang Bar Committee as defendants to the action. This originating summons is an appeal filed pursuant to s. 103(2) of the Legal Profession Act 1976 (the Act) whereby the plaintiff is dissatisfied with the decision of the Bar Council after referring the complaint to the State Bar Committee that a formal enquiry into the plaintiff's complaint against a member of the Bar made under s. 95 of the Act was not necessary.

After hearing Counsel for the defendants and a brief reply from the plaintiff, I am satisfied that both defendants are improperly made as a party to this summons. It is clear that the plaintiff is dissatisfied with the decision of the Bar Council and under s. 103 he filed the appeal to a Judge of the High Court. However, in my view, he cannot cite and make the Bar Council or the State Bar Committee or its officers as a party to the originating summons. First, s. 103(3) of the Act only requires the Bar Council to be served with the documents referred to in para. (2) of the section and upon a liberal reading of the subsection, it does not stipulate that the Bar Council must be made a party. (*Selvamary v. Rethinasamy* [1991] 1 CLJ (Rep) 412 at 417). Secondly, the Bar Council is not a body corporate and cannot therefore sue or be sued in its own name. Although it has power under s. 57(j) to institute, conduct, defend, compound or abandon any legal proceedings by and against the Malaysian Bar or its officers or otherwise concerning the affairs of the Malaysian Bar, in my view, it cannot institute or defend the proceedings in its own name. It is established under s. 47 of the Act which states that "for the proper management of the affairs of the Malaysian Bar and for the proper performance of its functions under this Act there shall be a Council to be known as the Bar Council.

For specific powers of the Bar Council and the powers of the State Bar Committee, see ss. 57 and 71 respectively.

By virtue of s. 41 of the Act, the Malaysian Bar who is a body corporate has power to sue and be sued in its corporate name. Thirdly, in the context of the plaintiff's application, the position of the Bar Council is akin to that of the subordinate tribunal. "It is common practice that in an appeal against the decision of a subordinate tribunal the tribunal itself is never made a party to the proceeding. That is indeed a correct proposition in relation to appeals to the High Court from subordinate tribunals and it is never the practice in regard to appeals under O. 55 of the Rules of the High Court 1980 to cite the subordinate tribunal as a party". (per Hashim Yeop A. Sani CJ in *Selvamary v. Rethinasamy* (*supra*) at p. 416 - 417).

For the above reasons, I allow this application with costs and direct that the name of the two defendants be struck out from the originating summons.

However, O. 15 r. 6(2) of the Rules of the High Court 1980 gives the Court a wide discretion at any stage of the proceeding in any cause or matter to add any person who ought to have been joined as a party to ensure that all matters in dispute in the cause or matter may be effectively and completely determined and adjudicated upon. In my opinion, the proper person who should be named as defendant in this proceeding is the solicitor against whom the

complaint was made as in the case of *Selvamary v. Rethinasamy* (*supra*). In the circumstances, I direct the plaintiff to amend this originating summons by adding the said solicitor as defendant and to serve the papers on him within 14 days.

With regard to Encik Kanesan's submission on the merit of the application, I shall deal with it at the next hearing of this originating summons.

Also found at [1992] 4 CLJ 1983